

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

**COMMENTS OF THE UNIVERSAL
SERVICE ADMINISTRATIVE COMPANY**

The Universal Service Administrative Company (USAC) submits these Comments regarding the Notice of Proposed Rulemaking released in the above-captioned proceeding on January 25, 2002.¹ In the *Schools and Libraries NPRM*, the Commission initiated a review focusing on some of the rules governing the federal universal service support mechanism for schools and libraries. The Commission sought “to ensure the continued efficient and effective implementation of Congress’s goals as established”² in section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act),³ and to explore various suggestions for improvement from all interested parties. The Commission sought comment from USAC on the operational and administrative impact of possible changes discussed in the *Schools and Libraries NPRM*.⁴

USAC is the private not-for-profit corporation that administers the universal service support mechanisms pursuant to the Commission’s Part 54 regulations.⁵ USAC administers the universal service support mechanisms for companies that provide service

¹ See *In re Schools and Libraries Universal Service Support Mechanism*, Notice of Proposed Rule Making and Order, CC Docket No. 02-6 (rel. January 25, 2002)(*Schools and Libraries NPRM*).

² *Id.* ¶ 1.

³ 47 U.S.C. § 254(d).

⁴ See, e.g., *Schools and Libraries NPRM* ¶ 3.

to high-cost areas, low-income consumers, rural health care providers, and schools and libraries, as well as the billing, collecting, and disbursing of all universal service support. USAC is governed by a board of directors which includes a broad representation of both industry and non-industry interests.⁶ The Commission has sought comment from USAC regarding numerous aspects of the proposals discussed in the *Schools and Libraries NPRM*.⁷ Commission regulations provide that USAC “may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms.”⁸ Some of the discussion in the *Schools and Libraries NPRM* concerns the appropriateness of possible changes to the program as policy matters.⁹ As the neutral administrator of the universal service support mechanisms, USAC has no opinion on and cannot comment regarding the policy choices confronted by the Commission. USAC submits these Comments solely to address the administrative issues raised by the Commission in the *Schools and Libraries NPRM*.

BACKGROUND

In section 254 of the Act, Congress instructed the Commission and the states to establish universal service support mechanisms with the goal of ensuring the delivery of affordable telecommunications services to all Americans, including consumers in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers.¹⁰ Section 254 of the Act requires that “[a]ll telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are

⁵ See generally 47 C.F.R. Part 54.

⁶ See 47 C.F.R. § 54.703.

⁷ See, e.g., *Schools and Libraries NPRM* ¶ 3.

⁸ 47 C.F.R. § 54.702(d).

⁹ See, e.g., *Schools and Libraries NPRM* ¶ 29.

¹⁰ The 1996 Act amended the Communications Act of 1934, 47 U.S.C. §§ 151, *et seq.* See Pub. L. No. 104-104, 110 Stat. 56 (1996).

within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.”¹¹

In the 1997 *Universal Service Order*, the Commission implemented section 254(h) of the Act by establishing the federal universal service support mechanism for schools and libraries.¹² Under this mechanism, eligible schools, libraries and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.¹³ Discounts on eligible services range from 20 percent to 90 percent, depending upon economic need and whether the applicant school or library is located in an urban or rural area.¹⁴

Pursuant to the Act, the Commission’s rules require the applicant submit to USAC an FCC Form 470 containing its request for services, which is posted to USAC’s website for review by potential competing service providers.¹⁵ After the FCC Form 470 is posted, the Commission’s rules require the applicant to wait at least 28 days before entering into agreements with service providers for services and submitting an FCC Form 471 requesting support for eligible services.¹⁶ Each year a filing “window” is established for submitting FCC Forms 471, and all applications that are received within the specified time period of the window are considered to have been received simultaneously for the

¹¹ 47 U.S.C. § 254(h)(1)(B).

¹² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff’d in part, rev’d in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir., 1999), *cert. denied, Celpage, Inc. v. FCC*, 530 U.S. 1210 (2000) (*Universal Service Order*).

¹³ See 47 C.F.R. §§ 54.502, 54.503.

¹⁴ See 47 C.F.R. § 54.505.

¹⁵ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

purposes of applying the Commission's rules of priority when there are insufficient funds.¹⁷ USAC reviews the FCC Forms 471 and issues funding commitment decisions indicating the discount the applicant may receive in accordance with the Commission's rules. Service providers may request disbursements in one of two ways. The applicant can pay the non-discount portion to the service provider, and the service provider can submit a request for the discount amount by submitting an FCC Form 474.¹⁸ Applicants may also pay bills in full, and then be reimbursed for the discounted amount by submitting, together with the service provider, an FCC Form 472.¹⁹ When USAC receives a BEAR Form, it disburses the discounted amount to the service provider and requires the service provider to remit that payment to the applicant.

Applicants may appeal USAC's denial or reduction of a request for funding directly to the Commission, or to USAC. If USAC rejects the appeal, the applicant may appeal to the Commission.²⁰

The Commission has established rules governing the administration of the mechanism in a series of orders.²¹ USAC has developed and refined its procedures

¹⁶ See 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Description of Services Ordered and Certification Form, OMB 3060 (October 2000) (FCC Form 471).

¹⁷ See 47 C.F.R. § 54.507.

¹⁸ See Schools and Libraries Universal Service, Service Provider Invoice Form, OMB 3060-0856 (October 2001) (FCC Form 474 or SPI Form).

¹⁹ See Schools and Libraries Universal Service, Billed Entity Applicant Reimbursement Form, OMB 3060-0856 (October 1998) (FCC Form 472 or BEAR Form).

²⁰ See 47 C.F.R. § 54.719.

²¹ See, e.g., *Universal Service Order; Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149423, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18598 (2000) (*Brooklyn Order*); *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734 (1999) (*Tennessee Order*).

implementing directions from the Commission, appeals decisions, audits, and as a result of internal review. USAC's administrative costs are a small percentage of the total dollar value of the program, and USAC strives, under Commission guidance, to minimize these costs while implementing the Commission's rules.

The Commission requested comment from USAC on the operational and administrative impact of possible changes discussed in the *Schools and Libraries NPRM*.²² The comments of USAC pertain to the administrative aspects of the following issues raised by the Commission.

With respect to the application process: (1) issues related to the process for determining eligible services, and the eligibility for schools and libraries universal service support of such services as Wide Area Networks, wireless services, and voice mail; (2) permitting schools and libraries to receive discounts for Internet access that may in certain limited cases contain content, as long as it is the most cost-effective form of Internet access; (3) the 30 percent processing benchmark for reviewing funding requests that include both eligible and ineligible services; (4) whether to require a certification by schools and libraries acknowledging their compliance with the requirements of the Americans with Disabilities Act and related statutes; and (5) modifying the rule governing when members of a consortium may receive service from a tariffed service provider at below-tariff rates.

With respect to post-commitment issues: (1) providing schools and libraries the flexibility either to make up-front payments for services and receive reimbursement via the BEAR Form process, or be charged only the non-discounted cost by service providers, and require that service providers remit BEAR reimbursements to applicants

within twenty days; (2) limiting transferability of equipment obtained with universal service discounts; and (3) allowing members of rural remote communities to use excess capacity from services obtained through the universal service support mechanism in certain limited situations.

With respect to the appeals process: (1) increasing time limits for filing appeals to 60 days, and (2) considering appeals to be filed as of the day they are postmarked.

With respect to strengthening enforcement tools: (1) adopting a policy explicitly authorizing independent audits; and (2) barring from the program certain applicants, service providers, and others that engage in willful or repeated failure to comply with program rules.

With respect to unused program funds: (1) the reasons for unused funds, and (2) how the Commission should treat unused funds.

²² See *Schools and Libraries NPRM* ¶ 3.

DISCUSSION

In the *Schools and Libraries NPRM*, the Commission set out three goals for review: (1) to consider changes that would fine-tune the rules to improve program operation; (2) to ensure that the benefits of the universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable; and (3) to improve the Commission's oversight over the program to ensure that the goals of the statute are met without waste, fraud or abuse.²³ USAC's comments are limited to a discussion of the administrative aspects of the various proposals raised by the Commission.²⁴ USAC addresses these matters in the order that they are set forth in the *Schools and Libraries NPRM*. USAC expresses no opinion on the desirability of the proposed changes. Because the Commission sets forth various options in relatively general terms, USAC's comments are, necessarily, somewhat general at this time. The full administrative implications of any policy changes will depend in a large part on the details of any new approach chosen by the Commission. Whatever the approach ultimately selected by the Commission, USAC respectfully requests that the Commission adopt clear rules, provide clear direction to USAC and program participants, and to choose a process that is transparent, enforceable, and fully auditable.

As a general matter, USAC would respectfully request that the Commission consider the time that will be required for USAC to plan and implement any changes the Commission directs it to make that require system and software changes, and consider these timing issues when setting deadlines for USAC.

²³ See *id.* ¶ 4, 12.

²⁴ See 47 C.F.R. § 54.702(d).

A. Proposals Related to the Application Process

1. Eligible Services

a. Computerized List

The Commission has sought comment on whether to establish a computerized list of eligible products and services that would be accessible online whereby applicants could select the specific product or service as part of the FCC Form 471 application.²⁵

The Commission sought comment on whether this list was desired, consistent with program goals, the feasibility of such a system, how often the list would be updated, how to ensure maintaining such a list would not inadvertently limit applicants' ability to take advantage of products and services newly introduced to the marketplace, how interested parties might best provide input to USAC on an ongoing basis regarding what specific products and services should be eligible, and how to handle services and equipment that are eligible only if used in certain ways.²⁶

USAC expects that establishing a computerized list of specific eligible products and services available online would be a multi-year process with significant development costs because a significant expansion of the existing computer system capability would be required, including software development and maintenance. USAC does not believe that it can provide a meaningful estimate of the cost of developing this database until the scope and contents of the database are more fully developed. USAC would strive to develop the most cost-effective product possible.

USAC does not currently maintain this type of information in a database. Item 21 of the FCC Form 471 application requires applicants to include attachments (Item 21

²⁵ See *Schools and Libraries NPRM* ¶ 14.

²⁶ See *id.*

Attachments) describing the services for which they seek discounts. Historically there have been no format requirements for the Item 21 Attachment. As a result, USAC has saved this information as computer images rather than as data. The Commission's proposal is to create a database wherein information provided in the Item 21 Attachments would be saved as data.

Should the Commission direct USAC to establish a computerized list available online, USAC would urge that the Commission provide it with maximum flexibility so that USAC can maximize benefits and minimize costs. If, after attempting to establish the database, USAC determines that it is not feasible, USAC would report that finding to the Commission and seek further guidance.

In regard to the development of the database, the Commission may wish to consider permitting an incremental approach, initially focused on one or two service types. USAC believes that such an approach would provide initial results, important lessons learned, and would place the ongoing application process at less risk than if there were a comprehensive change to a new system.

The Commission may also wish to consider permitting USAC to establish, at least as an initial step, a database containing the same information, but that could not be accessed from the FCC Form 471 application online. Applicants could search this database to determine whether the product or service is eligible for discounts, but would manually add this information to their FCC Form 471 application. Such a database could be created more easily and at less cost, though without the administrative cost-saving benefits described below.

Establishing a database linked to the FCC Form 471 application could have long-term benefits to customer service and administrative efficiency. Regarding customer service, a database of most eligible products and services could enable application review to be completed, in most cases, based on the information provided on the FCC Form 471 application, rather than by reference to attachments. However, requiring the use of an online database to complete an FCC Form 471 application might make completing the application very difficult for applicants who do not have a good understanding about the products and services they wish to buy. In that regard, an issue that will need to be explored is the extent of detail in the database. A smaller database of product and service categories (such as “router,” “e-mail,” and “local phone service”) might be easier to maintain and easier for applicants to use, but might not provide the same level of benefit as a more detailed database.

USAC believes the proposed database could provide increased customer satisfaction due to fewer calls to applicants during the application review process, fewer documentation requirements, and faster funding commitment decisions. As a result, USAC expects the database would result in a decrease in the costs associated with application review, but an increase in the costs associated with making product and service eligibility determinations. At this time, most of the work to determine whether a product or service is eligible takes place during the review of each FCC Form 471 application and during invoice reviews. If this proposal were to be implemented, this work would occur prior to the FCC Form 471 review at the time when USAC would determine whether a particular product or service could be added to the database.

USAC further expects that this capability would likely encourage applicants to submit funding requests electronically rather than manually. By filing electronically and selecting products or services from a list, applicants and service providers would have greater assurance that the products and services for which they are requesting discounts are eligible. To the extent that applicants submit forms electronically, administrative costs are substantially reduced. In addition, and as mentioned above, processing applications would be more efficient because there would be automated checking of the eligibility of services and products.

USAC also believes that this capability would enable it to achieve significant improvements in the area of post-commitment administrative processes, such as appeals, service substitutions, and invoicing, if the list permitted automated checking between the FCC Form 471 and post-commitment forms.

In regard to adding specific products and services to the database, USAC envisions that service providers, after consulting with the manufacturers of the product, would submit descriptions of new products or services for addition to the online list. USAC would then determine whether the products or services could be added to the database. USAC further expects that the database would be updated once a year prior to the opening of the window, and thereafter on a weekly basis for USAC's internal use. Finally, USAC would accommodate the introduction of new technologies during the funding year by means of the service substitution process.

In regard to how to handle services and equipment that are eligible only if used in certain ways, USAC suggests that the database might contain a capability for tying

products and services to their location and use. USAC expects that this could be accomplished by means of location and use fields.

b. Wide Area Network Related Expenses

The Commission has sought comment on whether it should change its current policy regarding Wide Area Networks (WANs).²⁷ Specifically, the Commission has sought comment on the fairness and effectiveness of the WAN policy, whether other policies could result in a more equitable distribution of discounts in the program, whether the three-year period of time over which WAN-related capital expenses must be recovered through telecommunication charges should be increased, whether a change in the approach to WAN-related expenses is warranted because the increase in requests for Priority One requests may be attributable to applicants leasing equipment from telecommunications providers for which they are likely to receive discounts rather than purchasing the equipment as internal connections, which have a high likelihood of not being funded under the current priority rules.²⁸

Beneficiaries have made USAC aware of service providers suggesting that products and services be packaged so that equipment that would normally be classified as internal connections instead qualifies as part of end-to-end Priority One services (telecommunications services or Internet access) in an effort to increase the likelihood of receiving funding. It may be instructive to examine the demand from Funding Year Four to Funding Year Five to assess changes in demand for Priority One services. In the revised demand estimate for Funding Year Four (July 1, 2001, through June 30, 2002) that USAC provided to the Commission on April 17, 2001, total demand for Priority One

²⁷ See *id.* ¶ 16.

²⁸ See *id.* ¶¶ 18-20.

services was estimated at \$1.73 billion, 33.3% of total demand for Funding Year Four . On February 28, 2002, USAC provided the Commission an estimate of demand for Year Five (July 1, 2002, through June 30, 2003). Total demand for Priority One services was estimated at \$1.82 billion, 31.7% of total demand for Funding Year Five. (Total demand for Priority One services in Funding Year Three (July 1, 2000, through June 30, 2001) was estimated at \$1.53 billion, 27.7% of total demand.) USAC cannot say whether these figures can be useful in predicting future patterns.

From an operational perspective, additional work is required to ensure that the *Tennessee*²⁹ criteria are satisfied before equipment on the applicant's premises can be approved as part of Priority One services. If the policy were changed so that such on-premise equipment were only eligible as internal connections, it would simplify the review process and reduce the work required to process applications.

c. Wireless Services

The Commission has sought comment on whether broadening eligibility for wireless services to include support staff as well as those directly involved in providing education or library services would improve the application review process, and whether such a change would increase opportunities for fraud and abuse.³⁰ The Commission has also sought comment on whether any rules or policies concerning eligibility of wireless services should be modified so that distribution of funds under the schools and libraries mechanism is consistent with competitive neutrality and does not favor wireline technology over wireless technology.³¹

²⁹ See *Tennessee Order*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734 (1999).

³⁰ See *Schools and Libraries NPRM d.* ¶ 21.

³¹ See *id.*

The application review process would be simplified somewhat if discounts were permitted for wireless services used by any employee of a school or library. Today, reviewing requests for discounts on wireless services often requires USAC to contact the applicant to clarify who will be using the services. If the services will be used by support staff, USAC modifies or denies the request.

d. Voice Mail

The Commission has sought comment on whether a change in voice mail eligibility would improve the operation of the program or otherwise further the goals of preventing fraud, waste and abuse and of promoting the fair and equitable distribution of the program's benefits.³²

Significant administrative cost savings would be realized only if other optional ancillary services that involve minimal cost and frequency were also eligible. The ancillary optional charges include, but are not limited to, additional directory listings, unlisted or unpublished numbers, and directory advertising. Including these ancillary services with voice mail as eligible would significantly reduce the number of applicant contacts that are required to verify the existence of these charges and the work required to reduce requests to eliminate these costs from funding requests. Since these charges do not typically appear on the vendor invoice, service provider documentation is often required before requests for disbursement may be approved. The end result is time-consuming for applicant, service provider, and USAC. If applicant contact were still required because these ancillary services remain ineligible, the eligibility of voice mail alone would likely result in virtually no cost or time savings during application and invoice review.

The estimated annual administrative cost saving for broadening eligibility to include these ancillary services is \$150,000 to \$200,000. This estimate is based on telephone calls for clarification, data requests, tracking and modifying databases, etc., that would be avoided.

2. Internet Access Bundled with Content

The Commission has sought comment on whether discounts on Internet access bundled with content should be permitted even if the Internet service provider offers the content separately without Internet access, provided that the bundled package is the most cost-effective alternative for Internet access.³³ The Commission has also sought comment on the costs and benefits of such a change, including whether providers might take advantage of this approach by adding content to Internet access in order to maximize revenues.³⁴ The Commission has further sought comment on whether discounts should continue to be available only for unbundled Internet access if the service provider offers it in both bundled and unbundled packages.³⁵

If the applicant requests a bundled package for Internet access that includes content that is more than minimal, USAC calls the applicant to determine the cost of such content. Depending upon that cost, USAC must reduce the funding commitment or deny it altogether if the cost is greater than 30% of the total funding request, and explain its decision in the Funding Commitment Decision Letter. If the Commission were to make content bundled with Internet access eligible without regard to whether it is sold separately by the Internet service provider, USAC would remove the cost of content only

³² See *id.* ¶ 22.

³³ See *id.* ¶ 25.

³⁴ See *id.*

³⁵ See *id.*

if a customer bill were provided by the applicant during the application review process and that bill listed content as a separate item with its own cost. The result of such a change would be to reduce administrative costs since fewer calls to applicants would be required. However, given the limited number of instances where contact is currently required, USAC does not expect the savings to be significant.

USAC is not usually aware of whether Internet service providers who sell bundled packages also offer content separately at a cost. If the Commission clarified that such packages are eligible if they are the most cost-effective alternative, the risk that USAC will approve ineligible requests would be significantly reduced.

If concern about service providers taking advantage of this approach were to lead the Commission to direct USAC to monitor service offerings from Internet service providers to detect instances where they add content to Internet access and sell it as a bundle in order to maximize revenue, this would require significant and costly efforts on USAC's part.

3. Review of Requests for Eligible and Ineligible Services

The Commission has sought comment on the operational benefits and burdens to USAC of the benchmark used for reviewing requests for discounts including eligible and ineligible services.³⁶ Under this benchmark, if less than 30% of a request is for ineligible services, the request is reduced and approved for funding. If 30% or more of the request is for ineligible services, the request is denied in full. The Commission has sought input on whether there are alternatives that would improve program operation or otherwise further the two goals of preventing fraud, waste, and abuse and promoting the equitable

³⁶ See *id.* ¶ 27.

distribution of the program's funds, while still providing appropriate incentives to applicants to seek discounts only for eligible services.³⁷

The procedure described in the *Schools and Libraries NPRM* is used by USAC in cases of ineligible services, but it is also used in cases of requests for discounts for eligible services to ineligible entities and in cases of requests for discounts for eligible services to eligible entities for ineligible uses.

A threshold at some level well below 100% is critical for expediting application review. The example the Commission cites is a real concern. If there were no threshold, there would be no disincentive for requesting discounts on ineligible services. To the extent that applicants exercised less caution in ensuring that their requests were only for eligible items, the application review process would be more difficult, and the likelihood that USAC would mistakenly approve discounts on ineligible items would increase.

For Funding Year One, the threshold was set at 50%. It was lowered to 30% for Funding Year Two and has remained at that level. If the threshold were lowered further, it would decrease administrative costs by lowering the review time of ineligible services and "free up" additional funding for those seeking discounts only eligible services. The administrative cost savings with a threshold of 20% would be estimated at \$50,000 to \$75,000 per year.

4. Compliance with the Americans with Disabilities Act

The Commission has sought comment on whether it should adopt a requirement that applicants certify that the services for which they seek discounts will be used in compliance with the Americans with Disabilities Act, the Individuals with Disabilities

³⁷ See *id.*

Education Act, and the Rehabilitation Act.³⁸ Were the Commission to adopt this requirement, it also has sought comment on the language of such a certification and on the timing in the application process; on whether rule changes would be needed to ensure that applicants that fail to comply no longer receive discounts; and on whether and how USAC and the Commission would verify and enforce compliance with the certification.³⁹

Form changes and some system changes would be required for any certification change, but they would not have significant impact on program administration.

The key issue in assessing the administrative impact of adding certifications to program forms is the role, if any, the Commission would direct USAC to play in the verification and enforcement of compliance with these statutes. If the Commission were to require USAC to undertake independent review to verify applicant compliance with these legal requirements, there would be a major increase in administrative costs. USAC would in all likelihood need to hire or contract with individuals with expertise in the compliance requirements of these statutes and associated regulations. If compliance were to be checked at the application stage when the certification is made, USAC would need Commission guidance regarding the size of the sample of certifications and the scope of the verification, at a minimum, and there would likely be other complex and possibly unanticipated administrative issues. In particular, whether information would be limited to obtaining additional information from applicants regarding their particular circumstances, or whether site verification would be necessary. To the extent that site verification is necessary, this would raise similar administrative complexities. This verification could, in theory, be performed at the same time as site visits to verify

³⁸ See *id.* ¶ 29.

³⁹ See *id.*

compliance with other program rules, but such site visits typically occur long after the application process has been completed and funds have been disbursed. Moreover, as site visits became more extensive and complex, administrative costs increase.

In addition, the consequences of non-compliance would need to be defined in terms of the support mechanism for schools and libraries. There are likely to be a plethora of issues, including, but not limited to whether the consequences of non-compliance would flow to the specific non-compliant site or to the billed entity, the services that would be impacted, the Commitment Adjustment implications, and application processing in future years. USAC expects there to be administrative impacts should USAC be required to ensure no discounts were going to certain entities within applications.

5. Consortia with Private Sector Ineligible Members

The Commission has sought comment on the impact of proposed changes to current rules regarding consortia with ineligible members to clarify that consortia with ineligible, private sector entities may negotiate for pre-discount prices below tariff interstate rates on behalf of public or eligible members, but discounts may only be provided for services to eligible consortium members if prices charged to ineligible private sector members are at the tariffed rates on program operations; whether this would cause increased administrative costs; what those costs would be; and whether the costs would outweigh the benefits of the change.⁴⁰ The Commission has further sought comment on whether changes to other rules regarding consortia would result in more

⁴⁰ See *id.* ¶ 31.

consistency or fairness with respect to the participation of consortia in the universal service support mechanism for schools and libraries.⁴¹

The proposed change should mean lower rates for eligible schools and libraries and should encourage the formation of more consortia to achieve those lower rates. The impact of this change could present administrative difficulties since it would require that USAC identify the rates to be paid by ineligible members – charges for which no discounts would be sought. Presumably, the consortium leader would know the rates to be paid by all consortium members and would want to provide those rates in order to obtain discounts for its eligible members. If ineligible private sector entities have a basis to object to disclosing to USAC the rates they are to pay, the provision could be difficult to administer. On the other hand, if ineligible private sector entities are required to pay tariffed rates, it is not clear what incentive they would have to join the consortium unless the consortium also arranged for the provision of other services at rates lower than generally available.⁴²

The Commission also sought comment on any proposals to clarify, change or reorganize consortia application and participation requirements, and to improve program operation or otherwise achieve the goals of the mechanism in terms of consortia participation.⁴³ No para. Break hereThe Commission may wish to consider adding certifications to Block 6 of the FCC Form 471 application that would clarify the roles and responsibilities of consortia leaders. The following statements, for example, reflect

⁴¹ *See id.*

⁴² USAC notes that the Commission may want to consider the manner in which rates paid by consortium members are treated in the Rural Health Care Support Mechanism. *See* 47 C.F.R. § 54.601(b)(1).

⁴³ *See Schools and Libraries NPRM*. ¶ 32

responsibilities of consortia leaders and adding them to the form consortia leaders must file to receive discounts should help ensure that they are aware of their responsibilities:

- I have been authorized in writing by authorized officials to represent the members of this consortium identified in Block 4 and to submit this FCC Form 471 application on their behalf, and;
- Discounts on these services/products have not been requested on any other FCC Form 471 application.

Because USAC already tests for compliance with these requirements, there should be no increase in administrative costs.

B. Post Commitment Program Administration

1. Choice of Payment Method

The Commission has sought comment on whether its rules should specify that service providers must offer applicants the option of either making up-front payments for the full cost of services and being reimbursed by the BEAR form process, or paying only the non-discounted portion up-front.⁴⁴

USAC does not expect this change to have a major impact on program operations. USAC accepts both forms today, and would continue to accept whichever form was submitted. Specifying up-front that service providers and applicants must agree on whether to use the BEAR or SPI form would bring clarification to the obligations and responsibilities of service providers and applicants, could decrease customer complaints in regard to this particular issue, and would strengthen USAC's ability to take action for failure to comply with the certifications made on those program forms.

The Commission has sought comment on whether it should incorporate enforcement measures regarding remittal of BEAR payments into its rules in order to

improve program operations and whether it should extend the period for remittance of the BEAR payment from the service provider to the applicant from ten to twenty days.⁴⁵

Form changes and some system changes would be required for any form change, but they would not have significant impact on program administration.

There have been numerous reported issues with service providers not remitting the BEAR payment to applicants in a timely fashion – or, in some cases, at all. This proposal could decrease administrative costs associated with customer complaints that service providers have failed to remit the funds within 10 days. While such behavior constitutes a violation of the service provider’s certification on the BEAR Form, some service providers do remit the funds within 20 days but USAC will have incurred administrative costs in addressing the customer complaint. Formalizing the requirement in the Commission’s rules would strengthen USAC’s ability to take action for failure to comply with the certifications made on the BEAR form.

2. Equipment Transferability Restrictions

The Commission has sought comment on whether the Commission should require that schools and libraries make “significant use” of the discounted equipment that they receive before seeking to substitute new discounted equipment.⁴⁶ In particular, the Commission sought comment on whether there may be insufficient incentives in the schools and libraries mechanism to prevent wasteful or fraudulent behavior, without imposing restrictions on equipment transfers, and sought comment on whether the Commission should adopt measures to ensure that discounted internal connections are

⁴⁴ See *id.* ¶ 34.

⁴⁵ See *id.* ¶ 35.

⁴⁶ See *id.* ¶ 38.

used at the location and for the use specified in the application for a certain time period.⁴⁷

The Commission posed the option of adopting a rule limiting transfers for three years from the date of delivery and installation of internal connections other than cabling, and ten years in the case of cabling.⁴⁸ Requests for discounts for new equipment to replace existing equipment that had been in place for less than the specified time periods might be approved only if the existing equipment were traded in to the service provider for a credit toward the purchase of new equipment.⁴⁹ The Commission sought comment on how this option could be implemented, and on the associated costs and benefits.⁵⁰

There is ambiguity today about transferring equipment. Clarification in this area would be helpful to applicants who want to abide by the rules and to USAC in its efforts to ensure compliance with rules. If verification of compliance were incorporated as part of the processes employed in beneficiary reviews during auditor site visits, it would not impose a significant new burden on administration of the mechanism.

USAC believes that there could be dangers in allowing applicants to trade in equipment to its service provider for a credit toward the purchase of the cost of new discounted equipment. One such danger would be that the service provider might accept the trade in for a *de minimis* amount, then sell the equipment to a new school for the same *de minimis* amount. The intent of the change would be best served if the trade-in value were the fair market value of the equipment being traded in. Verifying the fair market value of that equipment could impose a significant new workload on USAC. Depending

⁴⁷ See *id.*

⁴⁸ See *id.* ¶ 39.

⁴⁹ See *id.*

⁵⁰ See *id.*

on what audit and control procedures are agreed upon, there could be a significant increase in application and/or invoice processing costs.

The Commission also sought comment on the administrative costs both in the application process and in post-disbursement auditing associated with an alternative approach pursuant to which requests for discounts on internal connections would be denied with respect to an entity that had received discounts for internal connections within a specified period of years regardless of the intended use of the new internal connections.⁵¹ The approach of denying a request if internal connections had been funded in some previous time period would give entities that have been repeatedly denied internal connections funding because of the funding cap a chance to receive discounts. USAC expects this to be the least costly alternative because there could be an automated check during the pre-commitment review process. A risk might be that, in order to compensate for the year(s) of discounts they would have to forego, applicants would overestimate the work that could be done in the funding year. Applicants might then attempt to complete the work after the end of the funding year (in violation of program rules) or they would not make full use of the funds committed to them. This would exacerbate the gap between commitments and disbursements.

The internal connections service category includes equipment as well as maintenance of equipment. If the prohibition against discounts on internal connections in multiple years over a certain period of time were to apply to purchase, installation, and maintenance, it would be fairly straightforward for USAC to implement. This is because Item 22 of Block 5 of the FCC Form 471 application ties funding requests to lists of recipients of the products and services for which discounts are sought in that funding

request. If all proposed recipients of a new request for internal connections discounts had been associated with an internal connections commitment within the number of years specified by the Commission, USAC would simply deny the new request. If some entities associated with the new request had been associated with internal connections commitments in that period and some had not been, presumably, USAC would analyze the new request and reduce the request amount by the cost associated with entities previously funded. The Commission would need to provide guidance on whether the 30% rule or some other threshold would apply so that, if costs associated with previously funded entities were at or above that threshold, the entire request would be denied.

If the Commission were to decide that the prohibition against multiple years of internal connections funding within a specified period of time were to apply only to purchase and installation and *not* maintenance, USAC could not automatically deny an internal connections funding request simply because associated with it are only entities previously funded for internal connections, but, instead, would have to examine each such request to see if it included maintenance costs. The Commission would have to provide guidance about appropriate action if such requests included both maintenance and purchase/installation. Since more funding requests would have to be analyzed, special treatment to permit consecutive years of funding for maintenance of internal connections would significantly increase USAC's workload and administrative expenses.

3. Use of Excess Services in Remote Areas

The Commission sought comment on the types of situations that might warrant utilization of excess service obtained through the universal service mechanism for schools and libraries when services are not in use by the schools and libraries for

educational purposes.⁵² The Commission sought comment on several criteria that might be applied: (1) that the school or library request only as much discounts for services as are reasonably necessary for educational purposes; (2) the additional use would not impose any additional costs on the schools and libraries program; (3) services to be used by the community would be sold on the basis of a price that is not usage sensitive; (4) the use should be limited to times when the school or library is not using the services; and (5) the excess services are made available to all capable service providers in a neutral manner that does not require or take into account any commitments or promises from the service providers.⁵³ The Commission sought comment on the legal, operational, and enforcement issues raised by this approach, and on how to ensure that any revised rule would not indirectly impose costs on the schools and libraries program or that applicants would not request more service than is necessary for educational purposes.⁵⁴

There are risks, as the Commission observes, with this proposal: that eligible schools and libraries will purchase more services than they need for educational purposes in order to satisfy other community demands. It would be a significant new workload for USAC to monitor service levels from year to year to see if increases are justified purely by educational use. Verifying the terms under which services outside of school and library hours are made available to service providers for distribution in the community could also create a significant administrative burden. Verifying those terms could be limited to auditor site visits, in which case they would represent an incremental increase in the cost of each visit. Another alternative might be to permit such use of excess services only when a third party (e.g., a state or regional government) agrees to maintain

⁵² See *id.* ¶ 45.

⁵³ See *id.* ¶ 46.

auditable records on how the criteria are being satisfied by any applicant who chooses to make services available for such use.

C. Appeals

1. Appeals Procedure

The Commission sought comment on whether the time limit for filing appeals with USAC or the Commission should be extended from 30 days to 60 days and whether appeals should be treated as received on the date they are post-marked rather than the date they are filed.⁵⁵ The Commission also sought comment on any other changes to its rules or policies relating to appeals that might improve program operation, ensure a fair and equitable distribution of benefits and prevent waste, fraud, and abuse.⁵⁶

The proposals would provide more time for all parties to read USAC's decision, decide whether to appeal, and gather information to support the appeal. A change to a postmark deadline would provide equity among applicants and service providers no matter where they are located. USAC has experience with a 60-day deadline for appeals as a result of the FCC's emergency interim order on this subject and experience with postmark deadlines based on their use for many program forms for the past two years. Some additional work is required to process forms based on postmark dates rather than dates received – legibility issues become a factor, and envelopes or other evidence of the postmark date must be imaged. Neither change, however, would cause process changes that would significantly increase the cost of administering the mechanism.

It is likely, of course, that these changes would increase the volume of appeals that would have to be processed. In the *Schools and Libraries NPRM*, the Commission

⁵⁴ See *id.* ¶ 46-47.

⁵⁵ See *id.* ¶ 52.

states that 22 percent of all appeals to the FCC are dismissed as being outside of the appeals time period. Eighteen percent of all appeals filed with USAC for Funding Year 4 were dismissed as being outside the 30-day period. Had the period been at 60 days, over 95 percent of these appeals, or 450 additional appeals, would have had to be processed. To the extent that these proposed changes would generate an additional 450 appeals each year, USAC estimates that we would need to hire two additional full time resources to complete these files within a reasonable timeframe.

With respect to changes that might improve program operations, the use of a standard appeals template, which would require that the applicant state the issue being appealed as well as the FCC Form 741 application number and the Funding Request Number (s) (FRN), would speed up the appeal review process. Currently, USAC staff spend a considerable amount of time reading and analyzing the appeal letters to determine what issue the applicant is raising. A form might be developed to be available for submitting online or by e-mail, fax or mail. This form would require the applicant to fill in the FCC Form 471 Application Number, FRN and appeal issue.

2. Funding of Successful Appeals

The Commission sought comment on whether all successful appeals should be fully funded to the same extent that they would have been funded in the initial application process had they not been initially denied funding, and, if so, what rules should govern if the funding year's appeal reserve is depleted.⁵⁷ The Commission sought comment on one option that would be to use all available funds from the current funding year first, including funds that had been committed but never used by the original recipients, and

⁵⁶ *See id.*

⁵⁷ *See id.* ¶ 55-56.

then, if additional funds were needed, to use funds from the next funding year as soon as they become available and reduce the level of discounts in that next funding year by that amount.⁵⁸ Under this proposal, successful appellants might be funded in the order that decisions on appeal are issued, except that commitments might not be made to successful applicants requesting support for Priority Two services (internal connections) until USAC is certain that sufficient funds remain to fund all successful appellants requesting discounts for Priority One services (telecommunications services and Internet access).⁵⁹

Under current procedures, USAC sets aside a reserve for appeals based on the experience of denials and modifications of original requests for the current funding year, and the history of successful appeals compared to denials and modifications in prior funding years. That reserve is refined during the course of funding commitment waves. To date for all funding years, there have been sufficient funds to make funding commitments on all successful appeals from funds for the appropriate funding year.

The approach outlined in the *Schools and Libraries NPRM* would provide certainty about the availability of funds for all successful appeals, and it would be preferable to have clarity should the unexpected occur. However, the proposal to hold all Priority Two appeals commitments until USAC is certain that sufficient funds remain to fund all successful Priority One appeals would likely cause lengthy and largely unnecessary delays in making those Priority Two commitments under current rules.

Appeals can arrive over a period of many months and, historically, over a period of years. Appeals are filed from shortly after the first wave of funding commitments for a funding year until after the last wave of commitments. Funding commitments on

⁵⁸ See *id.* ¶ 56.

⁵⁹ See *id.* ¶ 57.

meritorious appeals generate additional rounds of appeals as applicants object to specific decisions in those later funding commitments. Applicants who object to adverse USAC decisions often appeal to the Commission. If these appeals are granted, the funding requests are remanded to USAC for further review. Those reviews may generate new funding commitments – and new appeals. If no meritorious Priority Two appeals could be funded until after the last meritorious Priority One appeal were known, it might not be possible to make Priority Two appeals commitments until late in the funding year or after the year closes. While FCC rules provide extensions for implementation of non-recurring services, those Priority Two requests could be for recurring maintenance charges, which might have to be paid by the applicant in the funding year. Even in the case of non-recurring charges, extensions of FCC deadlines may not be enough to meet applicant needs; they may have funds budgeted for the non-discount portion that must be used in a certain period or forgone

D. Enforcement Tools

1. Independent Audits

The Commission has sought comment on whether FCC rules should explicitly authorize USAC to require independent audits of recipients and service providers, at recipients' and service providers' expense, where USAC has reason to believe that potentially serious problems exist, or is directed by the Commission.⁶⁰ The Commission sought comment on the impact of such a rule on small entities and on alternatives that might provide other assurances of program integrity consistent with the goals of

⁶⁰ See *id.* ¶ 59.

improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.⁶¹

Where USAC has reason to believe that potentially serious problems exist, the cost of investigating those problems via an audit would be shifted from USAC to the applicant, thereby making more funds available for eligible schools and libraries.

2. Prohibitions on Participation

The Commission has sought comment on whether the Commission can and should adopt rules barring applicants, service providers, and others (such as consultants) that engage in willful or repeated failure to comply with program rules from involvement with the program, for a period of years.⁶² If the Commission were to adopt such rules, it sought comment on what standards should apply, the duration of time that such a prohibition might be applied, whether the prohibition should apply to individuals, so that those responsible for actions that led to the barring of a particular entity do not evade the purpose of the prohibition by joining or forming another eligible entity, and whether there are any additional measures the Commission might adopt to reduce waste, fraud, and abuse in the schools and libraries support mechanism.⁶³

USAC spends a considerable amount of time and resources identifying applicants, service providers, and consultants who are attempting to obtain funding commitments without complying with program rules. If the Commission adopted rules permitting prohibiting the participation of certain applicants, service providers and consultants, while extra effort would be required to make the case for such prohibitions, that extra

⁶¹ *See id.*

⁶² *See id.* ¶ 61.

⁶³ *See id.* ¶ 61-62.

effort would likely be more than offset by not needing to review all the applications associated with repeated rule violations and patterns of rule violations.

With regard to standards and procedures for barring such entities from the program, the Commission may wish to consider the model set out in Department of Justice regulations regarding debarment and suspension in the nonprocurement context.⁶⁴ Under these regulations, persons⁶⁵ may be debarred for, among other things:

- a) Conviction of or civil judgment for:
 - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - (2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
 - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or
 - (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.
- (b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:
 - (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
 - (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
 - (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.⁶⁶

⁶⁴ See 28 C.F.R. § 67.100 *et seq.* “These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs.” *Id.* at § 67.110(a). The regulations describe Federal nonprocurement programs as grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person.” *Id.* at § 67.110(a)(1)(I). Also instructive are the Federal Acquisition Regulations at 48 C.F.R. § 9 *et seq.* These regulations apply to federal government contractors.

⁶⁵ The regulations define persons as “[a]ny individual, corporation, partnership, association, unit of government or legal entity” with exceptions for foreign entities. 28 C.F.R. § 67.105.

⁶⁶ 28 C.F.R. § 67.305(a), (b).

These regulations provide for procedures for debarment including investigation and referral,⁶⁷ notice of the proposed debarment,⁶⁸ opportunity to contest the proposed debarment,⁶⁹ the standards according to which the debarment decision is made,⁷⁰ the period of time of the debarment,⁷¹ and the scope of the debarment.⁷²

With respect to additional measures to reduce waste, fraud, and abuse the Commission may wish to consider requiring consistent identification of consultants who advise applicants during the application process. Entities that apply for funding from the universal service support mechanism for schools and libraries are assigned entity numbers to identify them to USAC. Similarly, service providers that want to work with these entities must apply for and be assigned an identification number by USAC. These identification numbers provide contact information so that USAC can contact the entity during the application and invoicing review process, and should the entity be selected for an audit.

All entities that benefit from a particular application are listed in Block 4 of the Form 471. However, consultants are often difficult to identify. USAC has encountered difficulties in identifying consultants who are associated with applications where USAC has concerns about compliance with program rules.

The Commission may wish to consider requiring that consultants be assigned a Consultant Identification Number and that any person who submits an FCC Form 470 or 471 on behalf of an entity that is not that person's employer be required to identify

⁶⁷ See *id.* at § 67.311.

⁶⁸ See *id.* at § 67.312.

⁶⁹ See *id.* at § 67.313.

⁷⁰ See *id.* at § 67.314.

⁷¹ See *id.* at § 67.320.

⁷² See *id.* at § 67.325.

themselves by use of this a number. This requirement would apply both to consultants who have letters of agency from applicants and so are authorized to sign program forms on behalf of applicants, *and* to consultants who fill out and submit program forms for applicants, but do not have authorization to sign those forms. This would be similar in concept to having a tax preparer prepare a tax return. In these cases, the preparer must certify the truth of the statements and identify him or herself. The operational impact would be similar to, but much less than the workload currently experienced in the assigning of service provider identification numbers.

E. Unused Funds

1. Reduction of Unused Funds

The Commission sought comment on whether any other program changes would likely result in an increased percentage of committed funds being disbursed each funding year and whether it would be necessary to adopt procedures to address a situation in which more funds are committed and used than are available for disbursement.⁷³

USAC notes that, in conjunction with the Commission, an additional step was taken for Funding Year Four to close the gap between commitments and disbursements: a deadline was established for submitting the FCC Form 486 of 120 days from the date of the Funding Commitment Decision Letter or the service start date, whichever is later. Each year, there are a significant number of instances where the FCC Form 486 is not submitted until long after the start of service or never filed at all. The FCC Form 486 indicates that service has started or that the service start date has been confirmed with the service provider. USAC must receive this form in order for invoices to be paid. For Funding Years Two and Three, USAC has undertaken a process to cancel funding

commitments in regard to which FCC Forms 486 had not been filed well after the close of the funding year. Based on anecdotal reports, USAC has reason to believe that many applicants may think the process is complete once they receive the Funding Commitment Decision Letter. Setting a deadline for the FCC Form 486 was intended to emphasize that there are additional steps that must be completed before funds may be disbursed to the service provider. The FCC Form 486 must be filed, and invoices must be submitted.

With respect to procedures to address the possibility that more funds may be committed and used than are available for disbursement, USAC would urge the Commission to consider adopting such procedures. Even though the likelihood of that occurring may be small, it is not impossible. If there were to be some change in applicant or service provider practices that suddenly caused a significant increase in the rate of disbursements relative to commitments so that disbursements for a funding year might exceed the cap, program operations would run smoothly if USAC had clear guidelines in place regarding what action to take. USAC has been very conservative in the assumptions used in setting commitments above the disbursement cap. If there were procedures in place to address the situation of disbursements exceeding the cap, the assumptions used might be less conservative and commitments might be set so that disbursements could come closer to the cap.

2. Treatment of Unused Funds

The Commission sought comment on two alternatives relating to the treatment of unused funds: (1) credit them back to contributors through reductions in the contribution

⁷³ See *Schools and Libraries NPRM*, ¶ 68.

factor, or (2) distribute them in subsequent years of the schools and libraries program, in excess of the annual cap.⁷⁴

USAC has procedures in place to handle either alternative without operational or administrative impact.

F. Revising or Eliminating Outmoded Rules

The Commission sought comment on whether any of its administrative or procedural rules have become outmoded and need to be revised or eliminated.⁷⁵

USAC has not identified any administrative or program rules that have become outmoded and need to be revised. USAC will work with the Commission to identify such rules in the future.

⁷⁴ See *id.* ¶ 70.

⁷⁵ See *id.* ¶ 81.

CONCLUSION

USAC welcomes the opportunity to respond to the Commission's request for comment as the Commission considers changes in the universal service support mechanism for schools and libraries. USAC stands ready to assist the Commission as this process moves forward.

Respectfully submitted,

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